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ABSTRACT

In this report, the author analyzes the recent United States Supreme Court decision, compares it with the preceding California case, Serrano vs Priest, and predicts future changes in State school finance systems as a result of this case. The author traces the Court's reasoning for finding that there was no violation of the Equal Protection Clause of the 14th Amendment in Texas' method of school finance. He discusses the court's conclusion that no "suspect class" or "fundamental interest" was involved. The author suggests that there will continue to be challenges to State school finance systems, both in legislatures and in State courts. (JF)

SAN ANTONIO v. RODRIGUEZ

Analysis and Projection

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For the past two years, discussions of school financing have been dominated by the legal theory set forth in the California case of Serrano v. Priest. But Serrano was not destined to be the case to be decided by the United States Supreme Court. Because Serrano was decided by the California Supreme Court on a procedural question, the school finance case which first reached the United States Supreme Court originated in Texas. Thus Rodriguez v. San Antonio Independent School District, decided by the United States Supreme Court on March 21, 1973, represents the Supreme Court's response to the Serrano principle.

It is helpful to begin by stating the principle set forth in Serrano v. Priest. Briefly stated it is thus: The level of public education offered, measured in terms of dollars spent per pupil, may not be a function of the wealth of a local school district, but rather must be a function of the wealth of the state, taken as a whole. To permit gross inequities between school districts in the same state, in terms of levels of tax levies, levels of educational expenditure per pupil, and levels of assessed valuation per pupil, amounts to a denial of equal protection of the laws of the state, as guaranteed by the 14th Amendment to the Constitution of the United States. Thus spake Serrano.

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It should be pointed out first that the Equal Protection Clause of the Fourteenth Amendment applies only to the states; that is, it is the state which cannot deprive its citizens of the equal protection of its own laws. Because school districts boundaries are established by the state, and thus may be changed freely to eliminate or reduce inequities in local taxable wealth, Serrano argued that his child was deprived of the same level of education as was offered elsewhere in the state of California. In evaluating legal challenges to state laws brought under the equal protection clause of the 14th amendment, the United States Supreme Court has fashioned what has been described as the "fundamental interest" test. That is, in order to bring the factual situation within the purview of the equal protection clause, the citizen must show that the interest which he seeks to have protected from state discrimination is a fundamental one. This test is something more than saying that the citizen is concerned with an important function of government which is being administered unequally. He must show that this interest is a fundamental one, within the concept of American citizenship. If he is able to establish the existence of the fundamental interest, then the court applies a test of strict scrutiny of the state law to determine the equality of its application. Even a minor departure from strict equality of treatment may be sufficient to cause the court to hold the statute unconstitutional. If on the other hand, the court does not find that the interest which the citizen seeks to protect is a fundamental interest, then the court applies only the test of "rational purpose." That is, does the state enactment have some rational purpose to be served. This, of course, is a considerably lower standard and it is much easier for the state law to be upheld.

At this point, it might be helpful to identify some of the interests which have been held to be "fundamental interests" by the United States Supreme Court. State classifications on the basis of race have been declared to be unconstitutional under the equal protection clause.

Rights associated with voting have been held to be fundamental interests, as in the cases stemming from Baker v. Carr, which required the reapportionment of state legislatures in order that each legislator would represent the same number of electors. Classifications in state laws on the basis of wealth, as in the cases involving the payment of a poll tax as a condition precedent to voting have also been declared to be fundamental interests, and subject to the strict scrutiny test. The right to procreate and the right to freedom of interstate travel have also been held to be fundamental interests under the 14th amendment.

There were several pre-Serrano cases which attempted to secure judicial decisions to compel state legislatures to redesign state school finance systems. A Detroit case attempted to establish the principle of "equal educational opportunity," in effect asking the courts to declare that the state legislature was obligated to establish a state school finance system which provided each child with an equal educational opportunity. Although the Detroit case was never actually tried, a similar theory was submitted to court in Chicago. In that case, McInnis v. Shapiro, the court found that the equal educational opportunity test posed "justiciably unmanageable standards." In other words, the court held that it lacked the expertise to determine the educational needs of each individual child in the Chicago school system, and then further determine whether the financial system permitted those educational needs to be met.

A similar result was obtained in a case in Burruss v. Wilkerson, and the United States Supreme Court sustained the decision in both of the cases.

Rodriguez was initiated in 1968 in the general form of a school district reorganization case. However, with the Serrano decision in California, the cause of action was amended drastically in theory to pose the same questions of inequality of resources, expenditures, and efforts found in the California case. The Rodriguez plaintiffs lived in the Edgewood Independent School District, a district in the urban San Antonio area, and throughout the case Edgewood was compared with Alamo Heights Independent School District, an affluent district also in the San Antonio urban area. The case was heard on its merits (as distinguished from the procedural issue in Serrano) before a three judge federal court. That court found the Texas system of school finance to be in violation of the equal protection clause in December, 1973.

The Supreme Court granted the State's request for a review of the case, and reversed the decision of the federal court.

The questions upon review may be stated in the following terms:

1. Does the Texas system of school finance operate to the disadvantage of some suspect class, or

2. Does it impinge upon a "fundamental right" explicitly or implicitly protected by the United States Constitution?

If either of the above questions could be answered in the affirmative, then the court would apply the strict scrutiny test in evaluating the alleged inequalities involved. If both of the questions are to be answered in the negative, said the court, then the test becomes one of whether the Texas system rationally furthers some legitimate state purpose. Put another way the strict scrutiny test involved a high standard, the rational purpose test posed a much lower standard of examination of the Texas school finance system.

The federal district court relied heavily upon cases where wealth was involved in voting, such as the poll tax cases, and upon the indigent defendant cases, where the court had previously required the provision of legal counsel at public expense. Using this approach the district court found that the local property tax system classified the school districts of the state on the basis of wealth.

Upon review, the United States Supreme Court defined its task in these terms:

> "The Texas system of school finance might be regarded as discriminating (1) against "poor" persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally "indigent" or (2) against those who are relatively poorer than others, or (3) against all those who, irrespective of their personal incomes, happen to reside in relatively poorer school districts. Our task must be to ascertain whether, in fact, the Texas system has been shown to discriminate on any of these possible bases and, if so, whether the resulting classification may be regarded as suspect."

The court found that the plaintiff failed to demonstrate that the system operates to the disadvantage of any class definable as indigent--that the poorest families do not necessarily live in the poorest districts. The court further found that the plaintiff had failed to show that the lack of personal resources occasioned an "absolute deprivation of the desired benefit." Thus the court found that the disadvantaged class had not been defined, but that the plaintiff had asked the court to apply the strict scrutiny test to a "large, diverse, and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts." Thus the court's first question, as indicated above, was answered in the negative.

The court then turned its attention to the second question which it had posed for answer--is education a fundamental interest or fundamental right. The plaintiffs relied to a very great degree upon language in the racial segregation case of Brown v. Board of Education (347 U.S. 483, 1954):

> Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days it is doubtful that any child may reasonable be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (Emphasis supplied).

This last phrase provided the clue to the plaintiffs's case, because it spoke in terms of a "right" and indicated that the education must be made available on "equal terms." This, to the plaintiffs, sounded like equal protection.

The court, however, declined to accept the argument, saying "But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause." The court expressed the opinion that it should not invoke the strict scrutiny test by assigning a value judgment to the importance of the state legislation involved. To do this, said the court, would place the judiciary in a position of being a "super-legislature."

> It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. This the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.

The language above-quoted express the same basic viewpoint announced in the summer of 1972 in the case of Roth v. Board of Regents in which the Court determined that the United States constitution did not guarantee public school teachers a right to due process as to nonrenewal of contract.

The court also disclaimed "both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues."

After thus denying the appropriateness of the strict scrutiny test, the court then turned its attention to the question of whether the state school system of finance rationally served a legitimate state purpose. The court examined the history of school financing in Texas and concluded that the finance system did bear a rational relationship to a legitimate state purpose.

The majority opinion was written by Justice Powell, and he was joined by Justices Burger, Stewart, Blackmun and Rehnquist. A separate concurring opinion was filed by Justice Stewart, which added little to the majority opinion. Justice Brennan filed a dissenting opinion. Justice White filed a dissenting opinion, in which Justices Douglas and Brennan joined, and Justice Marshall filed a dissenting opinion in which Justice Douglas joined. Thus the basic decision was a 5-4 decision, with considerable fragmentation of opinion on the court.

Justice Marshall's dissenting opinion is worth examination, primarily because it refutes the majority opinion on a point-by-point basis.

First, said Justice Marshall, the majority opinion is an abrupt departure from the trend of the cases on this issue in both the state and federal courts. It is also, he said, a retreat from our national commitment to equality of educational opportunity. He also demonstrated that the inequalities

in the local ad valorem tax base in Texas are not made up by the application of state and federal funds. He called the attention of the court to Sweatt v. Painter in which the court had found inequality in a case involving segregation of law school students in Texas. As to the court's disclaimer of expertise, he pointed out that they had violated this disclaimer by finding that the Texas system did provide enough education in Texas, albeit at a minimal level.

Perhaps Justice Marshall's most convincing argument is concerned with the majority opinion's conclusion that the plaintiff must find a specific constitutional provision violated in order to establish the strict scrutiny test. This, said Justice Marshall, is not in accord with previous decisions of the United States Supreme Court in equal protection cases.

> "I would like to know where the Constitution guarantees the right to procreate, ... or the right to vote in state elections, ... or the right to an appeal from a criminal conviction. These are instances in which, due to the importance of the interests at stake, the Court has displaced a strong concern with the existence of discriminatory state treatment. But the Court never said or indicated that these are interests which independently enjoy full-blown constitutional protection."

The importance of education has been established, said Justice Marshall, in prior decisions of the United States Supreme Court. In this regard, Justice Marshall cited in particular the language from Brown v. Board of Education already quoted above. By way of passing it should be noted that Justice Marshall participated in the preparation of the Brown case and other school segregation cases.

Moreover, said Justice Marshall, there is a sufficient relationship between education and voting, and participation in the political processes and as to the general exercise of all first amendment rights, such as the receiving

of ideas and the enjoyment of life, to establish the fundamental importance of education in our nation. Justice Marshall cited numerous cases supportive of his contention that the United States Supreme Court had in the past accorded public education a high position in the system of national priorities.

The decision of the United States Supreme Court in Rodriguez thus appears to be another evidence of the retreat from the progressive stance of the Warren Court in issues involving individual and personal rights, and an adoption of a more conservative strict constructionist view of the Constitution. The minority in Rodriguez, Justices Marshall, Douglas, Brennan and White, represent the thinking of the Warren Court, while the majority represents the general philosophy of the newer appointees to the court.

Notwithstanding the Supreme Court's rejection of the Serrano principle in the Rodriguez case, it does not necessarily follow that the school finance reform issue will be laid to rest, even temporarily. The Kansas legislature, for example, has completely rewritten the Kansas school finance law, along the lines of John Coons' "power equalizing" principle. It may be fully expected that activities at the political level will be intensified in those states where it is possible to show that great disparities exist.

But there are also judicial avenues remaining. It should be remembered that the cases which held unconstitutional the state school finance systems of Kansas, New Jersey, Arizona, California and Michigan, were based either wholly or partially upon provisions of the state constitution, and were not limited to the 14th amendment of the United States Constitution.

In Kansas for example, Article 6, Sec. of the Kansas Constitution provides as follows:

> The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

This language clearly establishes the specific substantive right with respect to public education which the United States Supreme Court could not find in the United States Constitution. In Kansas, this substantive provision is coupled with an equal protection phrase in the Bill of Rights which is stated in the following terms:

> All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.

The combination of these two constitutional provisions thus established the necessary legal base for the district court decision in Kansas.

It is, therefore, reasonable to predict that there will be a very close scrutiny of the several state constitutions in the coming months to search for language which might establish the basis for new legal attacks on the part of school finance reformers in the state courts.

Some will argue that we should seek a direct amendment to the United States Constitution, but this would be an exceedingly risky business. In the first place it would amount to a complete revision of the structure of public education in the United States, and the ramifications of such a movement would create a controversy of monumental proportions. It is also a very lengthy procedure and it would not be possible to secure a constitutional amendment

establishing any basic federal responsibility for education without providing financial support for private and parochial schools, and this issue would undoubtedly be exceedingly divisive within the educational establishment.

Those interested in school finance reform may also want to turn their attention to practices within the school system which may tend to discriminate on the basis of the student's financial ability, such as the elaborate fee structure of most schools, the usual requirement for some students to provide a part or all of their learning materials in shops and laboratories, and the extensive merchandising activities of schools in the area of special trips, class rings, class photos, and other similar enterprises. The net effect of these ventures, taken together, tends to create great disparities in the full enjoyment of the total educational experience, due to the inability of some students to provide the wherewithal for participation.

And so all is not lost by the Rodriguez decision. Those who are interested in significant school finance reform still retain several avenues of attack. In those states where inequality is still a problem, it may fully be expected that the attack will continue on both the judicial and political levels. The struggle for school finance reform began when we first developed a truly universal system of public education. There is no great probability that we will find permanent school finance solutions. Rather, we will always be working to tailor our school finance system to solve new problems and meet the new challenges which face our rapidly changing society.